K 1951

File No. S. Bel 6/51

Legal **DEPARTMENT**

~~A~~ **BRANCH**

Subject:— Suit Belgaum

Civil Suit No. 30 of 1919
(now suit No 741-1552)

Sayed Shahajadesaheb Wellad
Hydersaheb } -Pltff

Vs.

The state of Bombay and
others } -Defts

For a declaration that no revenue authority has powers to pass an order for mesne profits and as such the order, dated the 10th Feb. 1941 passed by the Revenue Board, being is illegal and ultra vires and for an injunction

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Vs.

State of Bombay and others.

For a declaration that no revenue authority has powers to pass an order for mesne profits and as such the order, dated 10th Feb. 1941 passed by the Revenue Board, Sangli, is illegal and ultra vires and for an injunction

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Translation of the Plaint. O.S.No.7/42.

In the Court of the District Judge, Sangli.

(1) Sayad Shahajadesaheb Wallad Haydarsaheb)
Inamdar Mohalman. Occupation: Agri.)
Age, 60 of Marihal.)

Versus.

(1) Sangli State (Now merged in Bombay state
(2) Sayad Babasaheb Wallad Khadirpacha,)
Inamdar Age 32, Musalman, Agr. of Marihal)
taluka: Shahapur.)
(3) Sayad Mujaga: Age 28, (died after suit)
By heirs.))
(3a) Madijabi alias Hadimbeg w/o Abdul-)
-mujaga of Marihal, taluka Shahapur.)
(3b) Jilogarbeg alias Jilatpachabi.)
(3c) Firdoshaha Begum, alias Firbeshpachabi)
Father Abdulmujafs, age 4, minor guard-)
-ian mother Machinabi Abdulmujaf.)
(4) Sayad Nadirpacha. Age.22.)
(5) Firdoshbi wallad Khadriapacha Inamdar.)
of -do-)
(6) Khutejabi Kom Haydar saheb, inamdar,)
age, 60 of Belgaum.)

For Court fees and jurisdiction Rs.5/-

(1) Siti Pachabi w/o Amhadesaheb was wahiwatdar of 1/3rd share of the villages viz Hunage and Marihal taluke Shahapur, who died on 2-12-1908;

(2) After her death, litigations were started for owner--ship of the said property in the Rev. Court and therefore the Sangli Darbar attached the whole of the property to safe guard it;

(3) After the proper heirship enquiry, in the year 1916, pltff, was decided to be the heir to the property and His Highness the Maharaja of Sangli ordered that the name of the Pltff. should be entered as the legal heir and accord--ingly all the state of Pacha was given in the possession of the Pltff. And all the income of property during the period of attachment was also given to the Pltff!p posses--sion.

(4) In the year 1922, both the inam villages were transferred in the name of Mahabubabi w/o Khadirapacha mot er of deft. No.2 to 5, in contravention of the order passed by the H.H.Maharaja of Sangli(aforesaid in para 3). Really speaking the revenue court has no jurisdiction to pass such order;

(6) Subsequently I filed a revision application No.8/34, But however, it was ordered that the pltff. should handover the possession of the property and the income. Really speaking this order is also unlawful and and unjust.

(6) Then Mahabubabi took possession of the property through revenue authorities. It was not lawful for the Rev. authority to hand over such possession in absence of necessary Civil Court decree. In this connection, the pltff. has filed a suit separately in the Civil Court.

(7) Execution of order to handover the income was held up for a long time as the rev. authorities have no power to effect the same. In the circumstances, the case remained pending. The Rev. Branch Sangli, all of a sudden on 10-2-41 without serving a notice on the pltff. or without hearing the pltff's contention, ordered for the recovery of

of the ~~x~~income;

(8) The Rev.Bench has no authority to pass such an order of recovery. Moreover,there was no guerum of the Rev.Bench. Really speaking ~~nothing~~* is due *nothing from the Deft.s. It is unlawful to secure such an orderfrom the Rev.Board,without obtaining the lawful order of the Civil Court. Not only this but the defts.Nos.1 to 6 have demanded the same amount in the same court in darkhast No.8 of 1911. It is unlawful on the part of the revenue court to recover the said amount before the said decree is decided. The pltff,therefore,is compelled to file this suit to set aside the order passed by the Rev. Bench. The cause of action arose on 10-2-1941

(9) The usual court fee of Rs.5/-is paid,as the suit is to set aside the order passed(Revenue Bench).

(10) The suit being instituted against Sangli State, this court alone has jurisdiction for its trial.

(11) The postal acknowledgement in token of the receipt of notice issued under Sec,80 of C.P.C.is enclosed. The question of limitation does not arise since the necessary notice of suit has already been given;

(12) with a view to avoid any complaints from Defts. Nos.1 to 6, after the recovery of the amount,the said persons are made defts

(13) Thus the pltff. prays:-

(1) that this Rev. Authority has no powers to pass an order for recovery of the amount in question and as such the order,so passed on 10-2-1941, should be set aside.
(2) Cost of suit should be awarded;
(3) I should be awarded proper justice;
(4) Permission to correct the plaint should be given when necessary.

And a necessary decree may be passed.

The papers are produced according to the Ferist 10-4-1942.

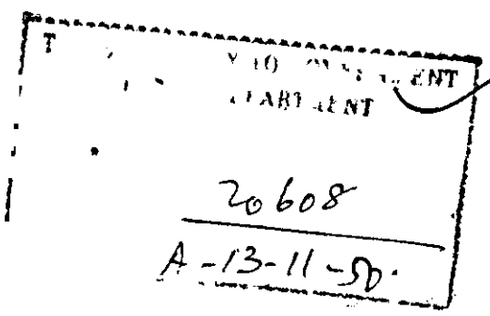
Belgaum Civil Suit No. 30 of 1949.

This is a suit for a declaration that order passed by the Revenue Board Sangli on 10-2-41, regarding the recovery of Mesne profits is illegal and ultra-vires and for an injunction. The suit was originally filed in the District Court, Sangli on 24-4-42. The Written Statement on behalf of the state was filed on 23rd Dec. 1943. (p. 25 of file No. II). Due to merger of the Sangli State, the State of Bombay was made a party to the suit .

Nothing can be said on merits of the case as the record is not available. However, the suit is defensible on technical grounds. The Defence of the Suit, may be sanctioned on the lines of the accompanying brief.

4/11

ASR Asst Mpl the Constitution
of Sangli
L. G. 6/11
Shri Gramdar



a Copy of the Govt of Sangli Act is kept herewith as ordered

6/11

11/11/50

7/11 Secy R.D. 8/11

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- Reg. O.S.No.30 of 1949. 5 19

In the Court of Civil Judge, S.Dn., At Belgaum.

1. Sayad Shahajadi Saheb Plaintiff.

versus.

1. Sangli State now merged in the Province of Bombay. Defendant.

Herein the Written Statement on behalf of Defendant No.1 is as follows:-

1. This Defendant denies the plaintiff's suit in toto

2. The plaintiff has misconceived his remedy regarding the suit claim. His liability to pay the mesne profits in suit, proceeds not from the order of the Revenue Board which he now challenges but from the order passed by His Highness Raja-saheb of Sangli recognizing Mahibubabi as heir to the deceased Pachabi in place of the plaintiff and directing him to pay back to Mahabubabi the rents and profits he received under the first order. Plaintiff therefore, cannot challenge the orders passed by the Rajasaheb in about 1922 or 1925. The said orders are final and binding on plaintiff. Hence the plaintiff cannot evade under any circumstances the liability to pay the mesne profits in question.

3. The State of Bombay, as successor to Sangli State, is not liable for the illegal or ultra vires acts if any of Sangli State, The suit ~~as~~ against this defendant is therefore not maintainable.

4. Without prejudice to what is stated above, this defendant adopts the Written Statement filed already by the Sangli State, on merits.

For these reasons the plaintiff's suit be dismissed with costs.

Belgaum.

Date:-

District Government Pleader,
Belgaum.

P.T.O.

I, District Government Pleader, Belgaum do hereby solemnly affirm that what is stated in the above mentioned paras from 1 to 4 is true to the best of my information obtained and believed to be true.

Belgaum.
Date:-

District Government Pleader,
Belgaum.

Origional Suit No. 7 of 1942./7

In the Court of the District Judge, Sangli State.

1. Sayad Shahajadbesahsb Vallad Haidarasab .. Plff.

Vs.

1. Sangli State represented by Chief Revenue Officer and Collector. ... .. Defts.

In this Deft No.1 puts in his Written Statement as under:-

1. The suit of the plff's is barred by time. As the matter in the suit was decided in 1922 and 1925 by the - Huzur this uit is not tenable.

2. The suit is barred by Revenue Jurisdcition Act.

3. The question in the suit has been already decided and for the other matter of that the suit is barred by resju dicata. The former decisiona of Civil and Revenue Courts have concluded the subject matter of the suit finally.

4. As the decree in the Civil Suit No. 2 of 1274 was consent decree in can neither be challenged in appeal or by seperate proceedings. It is binding on the parties of the sucessors.

5. The property ink the suit is both Watan and Inam propertyno civil suit can lie in the way in which it is ha brought. It is the Revenue Courts only that authority to pass the orders finally.

6. The Sangli State has recognised the propert heirs and owners to the suit property and the State had jurisdi--otion and authority to do so. The matter has been decided by legally constituted authorities and the plff had no - right to bring the present suit.

7. The decision of the Government in 1922 is final and binding on the plff. The Court Fee paid by the plff is -- insufficient. The deft requests that the suit be rejected

Suits :

Belgaum.

For a declaration that no revenue authority has powers to pass an order for mesne profits and as such the order, dated the 10th February 1941, passed by the Revenue Board, Sangli, is illegal and *ultra vires* and for an injunction.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 478.

Bombay Castle, 8th January 1951.

Letter from the Collector of Belgaum No. L.A.W. 875, dated the 14th July 1950—Forwarding the papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 80 of 1949.
(New Civil Suit No. 741 of 1952)

Sayad Shahajadesahab Wallad Hydarsaheb ... ... Plaintiff;

versus

The State of Bombay and others ... ... Defendants.

Memorandum to the District Government Pleader, Belgaum, No. 15926, dated the 15th November 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

To

* The Revenue Department,
* The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

* With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

Subld. after ...
file in S. Belgaum/51 (new)

22/2/51

A Sec

for

This S.R. was issued again after carrying out corrections in on 28-2-51

28-2-51

S Bel/51 (new)

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BELGAUM CIVIL SUIT No. 30 OF 1949.

NSS 741—1552

Chronological Statement of Facts.

The plaintiff has filed this suit against Government (formerly Sangli State) and five others for a declaration that no revenue authority has powers to pass an order for mesne profits as such the order, dated 10th February 1941, passed by the Revenue Board, Sangli, is illegal and *ultra vires* and for an injunction restraining Government from executing it.

2. One Pachhabi—a sharer in the Inam villages of Marihal Hunage—died in 1908. Whereupon an heirship inquiry ensued.

3. On 11th August 1916, the plaintiff was recognised as heir to the deceased Pachhabi under the order of His Highness, the Raja Saheb of Sangli. On 21st December 1922 this order was revised by His Highness, recognising one Mahabubabi as heir to the deceased Pachhabi in place of the plaintiff and directing him to hand over the rents of profits of the property the plaintiff received under the first order to Mahabubabi. Plaintiff tried every means by revisions and reviews to set aside the second order of his Highness but it was confirmed on 18th July 1925.

4. Mahabubabi got possession of the estate of the deceased on 6th August 1925 from the plaintiff. But she did not get the mesne profits. So, the proceedings were started to recover them from the plaintiff under the order of His Highness. On 18th January 1926 the property of the plaintiff viz., eight survey numbers was put up for sale for the recovery of the amount due from the plaintiff. But the sale was set aside. Again, the recovery of the amount due was ordered by His Highness on 10th April 1931. The plaintiff, then submitted an application to his Highness for the stay of the order of sale.

5. On 24th July 1931, His Highness appointed Messrs. Athavale and Kolhatkar to hear the plaintiff's application but till 1940, nothing was done in the matter. By that time the two officers were out of service.

6. On 2nd July 1940, His Highness referred the plaintiff's application to the Executive Council. The matter was sent by the Council to the Revenue Board, Sangli, for disposal.

7. Meanwhile, Mahabubabi died in 1932 and her eldest son was recognised as heir on 13th July 1934 by the State authorities.

8. Along with the application of the plaintiff, another petition dated 1st September 1939 by the heirs of Mahabubabi was sent to the Revenue Board for disposal. The Board heard the two

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applications together and passed an order dated 10th February 1941 directing that the plaintiff under no circumstances be all owed further time to do what he ought to have done as far back as in 1925 and in case of default the property of the plaintiff be put to sale for the recovery of money due from him.

9. On 9th February 1942, the plaintiff gave notice of suit to the Collector and Chief Revenue Officer, Sangli, under section 80 of the Civil Procedure Code and on 24th April 1942 he filed this suit in the Court of the District Judge, Sangli. After merger, the case was transferred to the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

1. The plaintiff has misconceived his remedy. The plaintiff's liability, in respect of mesne profits, proceeds not from the order of the Revenue Board but from the order passed by His Highness on 18th July 1925 recognising Mahabubabi as heir to the deceased, in place of plaintiff and directing him to pay back to Mahabubabi the rents and profits he received under the first order. Assuming that plaintiff succeeds in this suit, he will, still not be exenerated from his liability to pay back the mesne profits. The plaintiff could not challange the order passed by His Highness on 18th July 1925 nor any relief in that respect was sought for by him in this suit. On the contrary, the order was partly executed by delivery of the estate to Mahabubabi. It should, therefore, be contended that the plaintiff cannot evade the liability to pay the mesne profits under any circumstances.

2. Even assuming that the order passed by the revenue board on 10th February 1941 or other orders in that behalf are illegal and *ultra vires*, the Government of Bombay cannot be sued for the illegal acts, committed by the ruler of the State or by his revenue officers. It is an established principle that upon a cession of territory an inhabitant of a ceded territory can make good in the Municipal Courts established by the new sovereign, only such rights as the new sovereign has recognised and not the rights enjoyed under the rule of his predecessors. (Vajesingji *v.* Secretary of State, 26 Bom. L. R. 1143. Secretary of State *v.* Bai Rajbai, 17 Bom. L.R. p. 130. Sayad Asra Ahmed *v.* Dargah Committee of Ajmir, 49 Bom. L. R. p. 235). Therefore, the plaintiff has no right to bring this action against the successor of the ruler unless under the agreement of merger between the State and the Provincial Government, the State's liability for such illegal acts has been undertaken by this Government.

it can still be contended that

For these reasons, it should be contended that the suit fails and should be dismissed with costs.

S. Patel 6/57

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IN THE COURT OF THE CIVIL JUDGE, (SENIOR DIVISION) AT BELGAUM.

REGULAR CIVIL SUIT NO. 741 OF 1952.

1). Sayyad Shahajadesaheb Vallad, Haider saheb Inamdar, Caste Mohamadam, Occ. Agriculture & Jammedari, Age 60 of Belgaum, deceased by his heirs :-

1. Sayyad Bibijan w/o Sayyad Shahajadesaheb Inamdar, Caste Mohamadan, Occ. Agril. age 50, of Belgaum, Malli galli.

2. Sayyad Habibpacha alias Abdul Hasan Wallad, Sayyad Shahakadesaheb Inamdar, age 31, Caste, Occ. and residence Do.

3. Sayyad Shaffiapacha alias Sayyad Mahamadhusein Wallad Sayyad Shahajade sageb Inamdar age 29 caste, Occ. and residence do.

4. Sayyadsaheb father Shahajadesaheb Inamdar, age 24 caste, Occ. residence -do- .

5. Sayyadbibima father Shahakadesaheb Inamdar, age 23, caste, Occ. residence

6. Mustafapaccha Wallad Sayyad Shahajade saheb Inamdar, age 22, rest -do-.

7. Sayyad-Ammajan father Sayyad Shahajade saheb Inamdar, age 20 rest do-.

8. SayyadMahabubbi father Sayyad Shahajade saheb Inamdar age 19, rest -do-.

Versus.

1. The State of Bombay.

2. Sayyad-Babasaheb Wallad, Khadirpachha Inamdar, age 32, caste Mohamadan, Occ. Jammedari of Marihal Taluka Shahapur.

3. Sayya-Munaf Wallad Khadirapaccha Inamdar age 28, Caste Occ. residence -do-

3A. Madinabi alias Madinabegum w/o Abdul-Munaf Inamdar age 25, caste Mohamadan, Occ. House hold work of Marihal taluka Shahapur.

3B. Nilofarbegum alias Nilampacchabi, age 4) father
3C. Firdosbi-begum alias Firdospacchabi) Abdul-Munaf.
minors bytheir guardian-ad-litem mother Madinabi w/o Abdul-Munaf.

Amended as per order below Ex. 84.

4. Sayyad-Nazir-paccha Wallad Khadirpaccha Inamdar age 22 caste, occ. residence -do-.

5. Firdoshi Wallad Khadirpaccha Inamdar age 20 caste, occ. residence -do-.

6. Khutijabi w/o Haidrasaheb Inamdar age, 50, caste, occ. residence -do-.

Claim Rs. 5/- for Court Fee and Jurisdiction.

The plffs sue to obtain a permanent injunction restraining defts from enforcing the order passed by the Revenue Courts on 10-2-1941. The plffs claim a declaration that the order dated 10-2-1941 is ultra vires.

2. The plffs allegations are briefly these :-

Honge and Marihal are Inam village in Shahpur Taluka. Siti Paccjabi had 1/3rd share in the income of these villages. She died on 2-12-1908. After her death there were disputes in the Revenue Court as to who was the heir during the pendency of the disputes. The sangli state attached the village and took possession of Siti Pacchabi's property. As a result of the enquiry, Shahajadesaheb, the original plff. in the suit was declared to be the heir to Pacchabi and his name came to be entered in the Revenue Record as the heir to Pacchabi in 1916. The income that the Sangli State had received from the villages during the period of attachment was also handed over the Shahajadesaheb.

3. In 1922, the order of 1916 was set aside and Mahabubi the wife of Khadirpaccha was declared to be the heir of Pacchabi and her name came to be entered to the Inam villages Thereafter Shahajadesaheb made Revision application No. 8 of 34 against the order of 1922. It was then decided that Shahajadesaheb should hand over possession of all the property to Mahabubi together with the income received by him. Thereafter Mahabubi took possession of the property through the Revenue Courts.

4. The order regarding the refund of the income by Shahajadesaheb was not executed for a number of days. The Revenue Court had no authority to execute the order for refund. On 10-2-1941 the Revenue Bench made an order that the income received by - Shahajadesaheb should be recovered from him. The Revenue Bench had no authority to pass such an order. Defts. 2 to 6 have tried to recover the same amount from -- Shahajadesaheb in Darkhast No. 8 of 11. Shahajadesaheb was not given any notice by the Revenue Bench before passing the order dated 10-2-41. The order dated 10-2-41 being illegal, the plffs. have filed this suit for a permanent infunctior restraining the defts. from executing the said order.

5. Defts. 2 to 5 by their written statement at ex. 31 contend as follows:-

The suit is barred under Revenue Jurisdiction Act. It is also barred under sections 9 and 11 and order 2 rule 2 of the C.p.c. Shahajadesaheb got possession of the property of Pacchabi through the Revenue Court. In Darkhast No. 8 of 1911, it was decided by the District Court, Sangli that the income received by Shahajadesaheb during the period of attachment should be paid by Shahajadesaheb to defts. 2 to 5. Shahajadesaheb preferred an appeal against the order in darkhast No. 8 of 1911 but he did not succeed. The Revenue Courts declared on 22.12.1922 that Mhabubi was the heir of Pacchabi and that her name should be entered to the Inam villages. Against this order Shahajadesaheb preferred an appeal and Revision application. These were dismissed. Shahajadesaheb took the income from the Revenue authority, which it had received during the period of attachment by furnishing security. The Revenue Courts had authority to put in Defts 2 to 5 in possession.

6. Pacchabi had only life interest in the Inam villages. This is clear from the decree passed in the litigation between Pacchabi andSayyad Sadat. The Revenue Bench was properly constituted. The order passed by the Bench on 10/2/1941 is quite legal. Shahajadesaheb had made an application to the Revenue Bench that the exparte order made against him should be set aside. He was accordingly heard and the previous order was again confirmed on 25-6-41. The above orders having been passed in pursuance of Inam Javak No. 178 of 1332 and Huzur Court no. 8 of 1334 are quite legal. The plff. cannot file the suit without getting thse orders set aside. The Court fee paid is not proper. The suit is not tenable and should be dismissed with costs.

7. Ex. 40 is the written statement filed by the Chief Revenue Officer, Sangli. He contends as follows:-

As the matter in suit was decided in 1922 and 1935 by the Huzur Court, this suit is not tenable. The suit is barred by rest-judicata. The decree in ~~xxxxx~~ civil suit No. 2 of 1274 being a consent decree, cannot be challenged. The property in suit is both Watan and Inam property. ~~XXXXXXX~~ No Civil ~~Xxxxxxxx~~ suit can lie in the way in which it is brought. The suit is bad for want of proper and sufficient notice. The Civil Court has no jurisdiction to pass an order against the state or grant an injunction against the for recovery of amount which it is going to recover on the force of the legal order.

8. The State of Bombay which is not deft. No. 1 in the suit, has filed its written statement at ex. 126. By ex. 126, the contentions filed at ex. 40 are adopted. It is further contended that the State of Bombay is not liable for the illegal or ultra vires act of Sangli State. The suit therefore deserves to be dismissed with costs.

9. The issues for decision as per ex. 150 are :-

1. Is the suit barred by the Revenue Jurisdiction Act X of 1876 ?
2. Is the suit barred by sections 9 and 11 and Order 2, rule 2 of the Civil Procedure Code ?
3. Is the suit barred as res-judicata by the decision of O.S.No. 2/1274, Faisli ?
4. Is the suit barred as contended in paras 3,4,6 & 9 of Written Statement Exhibit No. 31.?
5. Is the suit barred as contended in para 9 of Ex. 40 ?
6. If so, is the plaintiff entitled to the injunction sought.?
7. Is the suit barred by limitation ?
8. Is the plaint properly stamped ?
9. What relief is plaintiff entitled to ?

10. My findings are :-

(1) No.

(2). No.

(3). No.

(4). No.

(5). No.

(6). Yes.

(7). No.

(8). Yes.

(9). As per order.

R E A S O N S.

11. The suit was originally instituted by one Shahhhadesaheb Inamdar, in the District Court, of Sangli in the year 1942, on 10-4-1942. He died after the suit and his heirs are brought on record. Defts. Nos. 2 to 5 are the sons of one Khadirpaccha. Deft. No. 3 died after suit. His heirs are defts. Nos. 2 & 4, and 3A to 3C. Khadirpaccha's wife was one Mahibubi. Defts.2 to 5 are the sons of Khadir-pacha and Mahibubbi. One Pachhabi, it will beem from ex. 168, was the sister of Haidarsaheb, the father of Shahajadesaheb. Mahibubbi was the daughter of Chotibibi and the granddaughter of Sadatsaheb. In the year 1864, there was a dispute between Sadatsaheb and Pachabi regarding the Inam properties of the Inam villages - Honge and Marihal. In 1864, Sadatsaheb brought suit No. 2 of 1274 Fasli, against Pachabi. In that suit, there was a consent decree between Sadatsaheb and Pachabi. The consent decree provided that Sadatsaheb and Pachabi. The consent decree provided that Sadatsaheb and Pachabi were to enjoy certain specified shares in the income of the two villages and that after the death of Pachabi. the two villages were to go to Sadat-saheb.

12. Sadat-saheb died in 1877 and Pachabi died on 21st Dec. 1908. After the death of Pachabi, the property which stood in the name of Pachabi, was under the attachment of Sangli State. In 1916, there was an enquiry as to who was the heir of Pachabi and a decision was given in favour of -- Shahajadesaheb on 11 Aug. 1916. Ex. 157 is a certified copy of the order passed by the chief of Sangli on 11th Aug. 1966. By this order, the name of Shahajadesaheb was asked to be entered as the heir of Pachabi. The income that had been

had been received by the Sangli State between 1908 and 1916; was ordered to be given to Shahajadesaheb.

13. Ex. 162, is a certified copy of the judgment in Second Appeal No. 71 of 1914 of the Huzur Court at Sangli. It shows that Mahabubbi sought to execute the decree in Suit No. 2 of 1274 (Fasali) in Dkt.No. 8 of 1911 in the Nyayadhisha Court at Sangli. By this Dkt. Mahibubbi claimed to be put in possession of the property enjoyed by Pachabi. The Dkt. was resisted by Shahajadesaheb and others as the heirs of Pachabi. They contended that the decree was merely declaratory and was not executable. The trial court came to the conclusion that the decree was executable, but that its execution was barred by virtue of a subsequent agreement between the parties. There was an appeal to the Huzur Court at Sangli. It was held in the appeal on the 8th June 1921, that the decree was executable, and the appeal Court ordered that the execution should be proceeded with.

14. The order of 1916 came to be passed while appeal No. 71 of 1914 was pending in the Huzur Court at Sangli. Ex. 159 is a certified copy of the order dated 18/7/1925 passed by the Chief of Sangli on the Revenue side. Ex, 159 makes a reference to appeal No. 71 of 1914. It further shows that Mahabubbi on the strength of the order of the Huzur Court (Civil Side) applied to the Revenue Court to have the entry made under Huzur in the place of Shahajadesaheb. Ex. 159 further shows that the Huzur Court (Revenue Side) by order No. 178, dated 27-12-1922, cancelled the order No. 888 of 1916, and ordered that the name of Mahabubbi be entered in the place of Shahajadesaheb, and that the property should be handed over to Mahabubbi by dispossessing Shahajadesaheb. It is important to note here that the Chief of Sangli did not, by his order dated 27-12-1922, ask Shahajadesaheb to refund the income that he had previously received from the Sangli State.

15. Being aggrieved by the order of 1922, Shahajadesaheb made an application for review of the order No. 178. That order was made under section 77 of the Bombay Land Revenue Code.

The Review Application of Shahajadesaheb came to be numbered as Revenue Regular No. 8 of 13334 Fasli. That application was decided on 18/7/1925. The Chief of Sangli ordered (1) that Mahabubbi should be recognised as the Registered Inamdar of the villages of Honge and Tarihal and that the Khata should be transferred to her name, (2) that the entire Revenu of the two villages, since the death of Fachabi, should be paid to Mahabubbi and that if the Revenues had been padd to Shahajadesaheb, he should be made to refund them. Further orders were also passed, but we are not concerned with those orders. As regards the Abkari income of the villages, it was ordered that it should be paid to Mahabubbi on proper -- being taken from her in order that, in case, the Applicant, Shahajade were to get his rights established the Civil Court, the same may be made over to him. It is important to note that the manner in which the income of the villages paid to Shahajadesaheb shoukd be recoverad from him, was not stated in the order dated 18th July 1925. It was only stated that Shahajadesaheb should be made to refund the income received by him.

16. Ex. 160 is the order passed by the Revenue Bench of Sangli on 10/2/1941. It is this order that is challenged in this suit as being ultra vires and illegal. Ex. 160 shows that Mahabubbi got possession of the lands on 6-8-1925. Shahajadesaheb moved his Highness on 19-11-1925 to suspend the order of restitution passed against him. High Highness directed that Execution Proceedings against Shahajade for restitution of the property should continue. Shahajade thereupon sought to know how much amount was due from him. On 28-11-1925 the Mamlatdar of Shahapur informed Shahajade that Rs. 15,989-1-5 were due from him and that he should pay the months immediately. The amount was not paid and on 18-1-1926 eight S.Nos. of Shahajade were sold for Rs. 6,161/-. Shahajade moved against for the cancellation of the sale. The Diwan reported and set aside the sale of the lands. On 10-4-1931 an order was again passed by His Highness directing that Shahajade must pay the amount and that in default,

Civ.Suit No. 2 of 1274 (Fasli) was executalbe. It is thus clear that Mahabubbi had in 1922 started independent Proceedings for getting back possession of the Inam Villages from Shahajadesaheb. I do not think that restitution could be ordered in these circumstances. The Proper remedy of Mahabubbi or her heirs was to claim the amount by way of a suit, both from the Sangli State and from Shahajade-saheb. Ex. 169 & 170 also go to show that the heirs of Mahabubbi are trying to recover the amount from Shahajade and his heirs in Dkt. No. 8/1911. I do not think that the order passed by the Revenue Board is correct.

20. It was submitted before me that the Chief of Sangli was a Sovereign power and could pass any orders he liked and his orders could not be questioned. I am not considering in this suit the orders passed by the Chief of Sangli. The order that it questioned before me is the one passed by the Revenue Board, and as I am of the opinion that it is ultra vires, it cannot be sustained. Furter, the Raja of Sangli had ordered in 1925 that Shahajade should be made to refund the amount. He did not lay down the manner in which the amount should be recovered. I am not whon any authority under which the Revenue Board could order the sale of the lands belonging to Shahajade. Under the Land Revenue Code, the State could bring to sale the lands of a holder if there were any arrears of land revenue due from him. The priperty could be sold only for the recovery of the land revenue. No arrears of Land Revenue are shown as due from Shahajadesaheb. I, therefore, hold that the Plaintiff is entitled to the injunction sought.

21. It is next contended that the suit is barred by Limitation as the orders for refund were passed in 1925. That order, as already shown above, did not say in which manner the amount should be recovered. Further, Ex. 160 shows that the Chief had set aside the sale of lands belonging to Shahajade somewhere between 1926 to 1931. Ex. 160 shows that the Chief was doubtful as to whether the lands of Shahajade could be sold and hence the lands remained to be sold till 1941. The Revenue Board finally made an

finally amde an order in 1941 that the property of Shahajade should be sold. This order did give a cause of action to Shahajade for filing the present suit. The suit has been filed within one year, of the order passed by the Revenue Board. The Article applicable to this suit is Art. No. 120 of the Indian Limitation Act. It lays down a period of 6 years. The right to sue-accrued in 1941 and hence the present suit is in time.

22. The contentions that the suit is barred by the Revenue Jurisdiction Act, and by sections 9 and 11 and O.2, r.2 of the Code of Civil Procedure, were not passed before me. There is no substance in these contentions. Issues Nos. 1 & 2 are, therefore, answered in the negative.

23. The contention that the suit is barred by Res Judicate by the decision in Suit No. 2 of 1274 (Fasli) was not pressed at the time of arguments. The point raised in this suit was not in issue in O.S.No. 2 of 1274 (Fasli). Issue No. 3 is, therefore, answered in the negative.

24. For the reasons given above, IssuesNo. 4 and 5 are also answered in the negative. The contention of the Defendants that the suit for injunction is not tenable as against the State has no substance in it. The plaintiff is entitled to an injunction as it has been clearly shown that the order dated 10-2-1941 is ultra vires and illegal. There is also no substance in the contention that the Plaint is not properly stamped. This is a suit for injunction and it is rightly valued for the purposes of Court Fees at Rs. 5/-. The Court Fee paid is proper. As a result of the above finding, I decree the claim and pass the following order:-

O R D E R.

25. The Defendants are permanently restrained by an injunction from executing the order dated 10-2-1941.

The Plaintiffs shall recover the costs of the suit from the Defendants.

Defts. do bear their costs of the suit.

17th February 1953.

Sd/-P.D.Mahatekar.
Civil Judge,S.Dn.Bel

Suits:
Belgaum.
For a declaration that no revenue authority has powers to pass an order for mesne profits and as such the order, dated the 10th February 1941, passed by the Revenue Board, Sangli, is illegal and ultra vires and for an injunction.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1501/6
Bombay Castle, 14th July 1953.

Read Government Resolution, Legal Department No. 478, dated the 8th January 1951.

Endersement from the District Government Pleader, Belgaum No. 156, dated the 19th March 1953, stating that the suit noted in the margin was decided by the Civil Judge (Senior Division), Belgaum on the 17th February 1953, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Belgaum. Civil Suit No. 30 of 1949. Sayad Shahajadesahab Wallad Hydarsaheb..... Plaintiff. vs. The State of Bombay and others..... Defendants.	:

" The defendants are permanently restrained by an injunction from executing the order dated 10-2-1941.
The Plaintiffs shall recover the costs of the suit from the defendants.
Defendants do bear their costs of the suit."

Letter from the District Government Pleader, Belgaum No. J-192, dated the 14th April 1953, forwarding uncertified copies of the judgment and decree.

RESOLUTION :- The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

R. T. Katarki
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum.

Submitted for Signature
Sd
13/7
Supdt NB 13/7/53
D.S (Civil)

Submitted after issue
Fee in S Bel 6,5

Vh
15/7

Export NB
15.7.53

S. Belgaum 15/7/53

(OSPS No. J.599 of 25-8-53) 29/89

6/57

नकलेस अर्ज दाखल तारीख डिक्रीसमे वर्ष.

नकलेस पैसे हजर केली ता. २ महे जून वर्ष.

नकल तयार तारीख ४ चार महे जून वर्ष.

नकल दिली तारीख ५ पाच महे जून वर्ष.

Sd- U.K. Pandurang.
Record Keeper.

[redacted]
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2-2-0
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6-1-0

सांगली डि. कोर्ट अ. नंबर १७ / ७२

दाखल तारीख १०-४-७२ बेळगांव कोर्ट

स्मॉ. दावा नंबर ३० / ७१ दाखल तारीख १७-३-७०

अव्वल मुकदमेयांत हुकूमनामा

हुकूमनामा नि. १७२

- बेळगांव येथील सि. जा. सि. डी. यांचे कोर्टांत

मुकाम बेळगांव येथे

इ. दिवाणी मुकदमा नंबर ७-७१ सदा १९७२ पैकी

(१) सय्यद इस्माइलसाहेब व. हैदरसाहेब इनामदार

- जात मुसलमान धंदा शेतकी व जमेदारी

- राहणार वर्षे ६० रा. बेळगांव मरवत

- तारसदार.

१) - बाराको सय्यद बाबासाहेब जात मदे

सय्यद इस्माइलसाहेब इनामदार जात

मुसलमान धंदा शेतकी वय ६०

रा. बेळगांव माको गाले.

२) सय्यद हुसेन पाचव्हा उर्फ अल्लाउल

हुसन व. सैयद इस्माइलसाहेब इनामदार

वय ३१ जात वगैरे सदर.

३) सयद शरीफीय साहेब उर्फ सयद
महमद हुसन साहेब व. सयद शहाजाद साहेब
इनामदार वय २६ जात धंदा वगैरे सदर
४) सयद साहेबची बाप सयद शहाजाद
साहेब इनामदार वय २८ बाकी सदर
५) सयद बीबीमा काम बाप शहाजाद
साहेब इनामदार वय २६ बाकी सदर
६) मस्ताफ पाच्छा व. सयद शहाजादसाहेब
इनामदार वय २८ बाकी सदर
७) सैयद अमाजान बाप सैयद
शहाजाद साहेब इनामदार वय बाकी सदर
८) सैयद महोबुबी बाप सैयद
शहाजाद साहेब इनामदार वय १९
बाकी सदर
या प्रमाणे तिन ९१० प्रमाण
दुरुस्त केले तारीख ११-३-१९५०
Sd. C.P.S.D.
विरुद्ध

१. व. खादिर पाच्छा इनामदार जात धंदा रा. सदर

२) खुतीजाबी कोम हैदर साहेब इनामदार वय ५० जात धंदा वगैरे सदर

३) सय्यद हबीब पाच्छा उर्फ अबदुल हसन व. सय्यद साहेबजाद साहेब इनामदार जात मुसलमान वय ३१ धंदा शेतकी रा. बेळगाव माकी गाडी. } प्र. वादी

दावा दाखल तारीख १७-१२-५२

दावा पैसे तारीख १७-१२-५२

दावा रुपये कोर्ट फी करिता व कायदेच अधिकारा करिता ६०.६०

वादीचा दावा असा आहे की —

१) ता. शहापुर पैकी होनगे व मारिहाळ ही दोन्ही गावे इनाम असून त्या गावच्या १/३ उत्पन्नाची वहिवाट दरीण सीती पाच्छाबी को. अहमद साहेब ही होती. सीती पाच्छाबी तारीख २-१२-१९०८ साली वारली.

२) तिच्या मरणा नंतर तिच्या सर्व इस्टेटीचा मालक कोण या बद्दल मुलकी कोर्टात वाद सुरु झाला. या कारणाकरिता सांगली सरकारची

१) ए.स्टेट ऑफ बाबा म्हणून
निशा १पंच प्रमाणे दुरुस्त करुन दा.
2 ब-1-पंच
H. C.J.S.D.

2) सैयद बाबासाहेब व. खादीर पाच्छा
इनामदार वय 32 ज्ञात मुसलमान धंदा
खोमदारी रा. मारीहाळ ता. राहापुर

(3) सय्यद मुनाफ वय २८ दावेनंतर
मयत वारसदार प्र.वादी नं. २-अ
(अ) मरीनाबी उर्फ मरीना बेगम
मर्द अबदुल मुनाफ इनामदार वय २५
धंदा मुसलमान धंदा घरकाम रा.
मारीहाळ ता. राहापुर

(ब) निलोफर बेगम उर्फ नीलम
पाच्छापाबी

(क) फिरदोसबी बेगम उर्फ फिरदोस
पाच्छापाबी मुनाफ नि.५८-अ प्रमाणे दारवर
तारीख २७-२-८६
C.J.S.D.

X बाप अबदुल मुनाफ वयवर्ष अनुक्रम
अ-१
अ.पा. आई मदीनाबी मर्द अबदुल मुनाफ
C.J.S.D.

ड) सैयद नाईरपाच्छा वय २२ X
ई) फिरदोसबी " " २०

इस्टट सुरक्षीत राहावे म्हणून ऑर्डर
करून इस्टेट ताब्यात घेतली.

3) नंतर रीती प्रमाणे वारस पोकरणे
होवून सन १९१६ साली वादीचे नांव वारस
दार म्हणून मंजूर करून त्याचे नांव दारवड
करण्यात आले व त्या प्रमाणे श्रीमंत राजे-
साहेबांनी इनाम गावास व इतर मिळ-
कतीस नांव दारवड करण्या बद्दल हुकूमही
केला. त्या प्रमाणे गांव दारवड झाल्यानंतर
पाचपंचांचे सर्व इस्टेट वादीच्या ताब्यात
मिळाली मध्यंतरी इस्टेट सरकारात जप्त
झाल्या कारणाने त्यावेळी ती जमा
झालेले उत्पन्नही वादीस देण्यात आले

4) असे असता सन १९२२ साली वरील
हुकूम येकदर फिरवून प्र. वादी नंबर २ व ३
चे आई म्हणजे वडीलांचे काम रवादीर पाचपंच
इचे नांव इनाम गांवास दारवड करण्यात आले
वास्तविक मुळची कोर्टात अशा रीतीने
फेर हुकूम करता येत नाही असे असता
तिने हा बेकायदेशीर हुकूम मिळविला.

5) नंतर या हुकूमाचा फेरविचार
व्हावा अशा बद्दल मुळची तपासणी अर्ज

कंपनी वर्ग ३ चा दारुण कोडा. त्यामध्ये
बाकीच्या गोष्टीचा विचार न होता
वादीने आपल्या कडे असलेली सर्व
पाच्छाबंदीची मिळकत परत द्यावी असा
ठराव कोडा. वास्तविक हा हुकूम
बेकायदेशीर व अन्यायाचा आहे.

६) त्या कारणावर सदर महाशयांनी दणा मुळकी
कोर्टा मार्फत मिळकतीचा कब्जा घेतला.
मुळकी कोर्टाचा अंमलदारीतीने योग्य
दिवाणी कोर्टाचा हुकूम नामा नसताना
कब्जा देणे अधिकार पोहोचत होता.
त्या बद्दल वादीने दिवाणी कोर्टात
काम चालविले आहे.

७) उत्पन्न परत देविण्या बद्दाच्या
हुकूमाची अमल बजावणी वरेच दिवस
पर्यंत झालीच नाही. कारण मुळकी
कोर्टाचा कब्जाच करता येणे शक्य नव्हते
अशा स्थितीत हे सर्व प्रकरण पडून च
होते. त्यानंतर डिक्रीदार ता. १२-२-५१ रोजी
रोजी वादीला योग्य नोटीस न देता
अगर त्याचे म्हणणे ऐकून न घेता

उत्पन्नाच्ये सर्व रकम वसूल करावी.
असा हुकूम तारीख १०-२-४१ इसवी
रोजी रेव्हिन्यू अपील केला.

८) अशा तऱ्हेचा हुकूम करण्यात रेव्हिन्यू
अपीलच्या अधिकार नाही. रेव्हिन्यू अपील
दिवसी योग्य रीतीने चालविले नव्हते.
वास्तविक वादी हा प्र. वादीला रकम देणे
लागत नाही. योग्य कोर्टाचा आश्रय न
करता प्रस्तुत मुद्दाची कोर्टाचा थेटपणे हुकूम
मिळविणे अत्यंत बेकायदेशीर आहे. इतक्या
नव्हे तर प्र. वादी नंबर २ ते ६ यांनी
यापूर्वी कोर्टात दरखास्त नंबर ६ मध्ये
काम चालवून त्याच रकमेची मागणी केली
आहे. त्याचा निकाल होण्यापूर्वीच मुद्दाची
कोर्टाचा हुकूम रकम वसूल करावी असा
हुकूम करणे हे अत्यंत गैर आहे सबब हा
हुकूम रद्द आहे असे ठरवून त्या प्रमाणे
रकम वसूल करण्यास अशी कायमची
ताकीद देण्यासाठी हा दावा करणे भाग
पडले.

दाव्यास कारण ता. १०-२-४१ इसवी रोजी

दाखले

९) हुकूम रद्द करून कायम: तात्पुरते मिळण्या बद्दलचा दावा असल्या कारणाने ठरावीक कोर्ट फी रुपये ३६० दिवडे आहे. अधिकारासाठी किंमत रुपये २६० आहे.

१०) सरकारी संस्थानाविरुध्द दावा असल्या कारणाने याच कोर्टास हा दावा चालविण्यास अधिकार आहे.

११) सि. प्रो. कोड कलम ८० प्रमाणे योग्य ती नोटिस दिलेली आहे. नोटिस पोचल्या बद्दलची पोस्टाची पावती हजर केलेली आहे. नोटिस दिली असल्या-मुळे दाव्यास मुदतीची हरकत नाही.

१२) रकम वसूल झाल्या नंतर प्र. वादी नंबर २ ते ६ यांना रकम मिळण्याची असल्या कारणाने त्याची तकरार राहत्ये म्हणून त्यांना पक्षकार केले आहे.

१३) वादीची विनंती अशी आहे की प्र. वादीच्या सर्व तकरारी रद्द करून

१) मुळची कोर्ट मालिक असी

तसेच रक्कम वसूल करता येत नाही.
वि त्या बद्दल झालेला हुकूम नम्मत ता.
१०-२-४१ चा बेकायदेसीर आहे असे
ठरवून प्र.वादीनी त्या हुकूमाची अमल
पडावणी करण्ये अशी त्यांना कायमची
ताकीद देण्यात यावी.
२) या दाव्याचा खर्च मिळावा.
३) इतर योग्य ती दाद मिळावी.
४) असल अर्ज दुरुस्त करण्यास परवा
नगी असावी.
येणे प्रमाणे हुकूम नम्मा व्हावा.
१४) पडगत फेरीस्त प्रमाणे कागद पत्र दाखल आहेत.
तारीख १७ माहे फेब्रुवरी सन १९४२
इ.रोजी मे. पी. डि. महाराकर सि. जे.
एस. डि. यांच्ये समोर वादी तर्फे श्री.
डाम. डी.एस. नरगुंदकर व डी.एस. नरगुंदकर
वकील व प्र. वादी तर्फे श्री. जी. डी. दरसाई
वकील प्र. वादी ३ ते ५ ३८ श्री. पी. डि. जे.
दरसाई आणि वी.डी. नाईक वकील प्र.

प्र.वादी तर्फे बी.डी. नाईक यांच्या
समक्ष अरेरे निकाला साठी मुकदमा
निघाल्या वरुन असा हुकूम होत आहे की:
प्र.वादीनी तारीख १०-2-४१ इसवी
रोजी वादी विरुध्द मिळविलेल्या हुकूमाचा
अमल बजावणी करुनये म्हणून त्यांना
(प्र.वादीना) कायमची ताकीद देण्यात
आलेली आहे.
वादीनी या दाव्याचा आपला कोर्ट
खर्च प्र.वादीच्या कडून वसूल करुन घ्यावे.
प्र.वादीनी या दाव्याचा आपला
कोर्ट खर्च आपण सोसावा.

खर्चाचा अकडा (वादीचा)

फिर्याद अर्जास	५	०	०
मुखत्यार नाम्यास	०	८	०
दारवड इतर कागदास	२५	७	०
स्टाप			
प्लीडर चा फी	१५	०	०
प्रोसेस फी	५६	१	०
नकला करण्याची फी	६	१४	५
	१४४	१४	५
नादिलाच्या खर्च	२२	५	०
	१६२	९	५

बाकी

(११) 39/67

प्र.वादी 2

प्र.वादी १

मुखत्यार नाम्यास स्टॅप	०-८-०
दाखल इतर कागदावर स्टॅप	१२-१०-०
एडिडरची फी	९५-०-०
नकला करण्याची फी	१/७ -०-०
एकूण	२७-१०-०
वजा दिलेला खर्च	१२-१०-०
बाकी	१५-१०-०

	०-८-०
	१०-८-०
	९५-०-०
	३५-११-३.
	८१-११-३.
	३-२-०
	५८-९-३.

प्र.वादी ३ A & ३ C & ५ & ६

मुखत्यार नाम्यास	०-१०-०
दाखल इतर कागदावर	५-८-०
एडिडरची फी	१५-०-०
नकला करण्याची फी	९-५-०
एकूण	३०-८-०
वजा दिलेला खर्च	३-०-०
बाकी	२७-८-०

आज तारीख २७.१७ महे 2 सन १९६३ रोजी आमच्या सही निशी व कोर्टाच्या शिक्क्या-निशी दिली.

Sd- P.S. Mahalekar
2-4-53.
Civil Judge S.D.
Sd- S.V. Patil
कारकून

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Sd- V.S. Nargundkar
वादी वकील-

Sd- M.R. Patil (हिंदू)
1-4-53.

प्र. वादी वकील.

हया मुददयातील पक्षकारांना अशी ताकीद देण्यात येते की:- त्यांनी हजर कोर्टास काही तरी दरम्यान डायरी (परत) केले नाही तर अपील खर्चासह नामंजूर करण्यास पात्र होतील.

Copied by.
Sd- M.V. Tikle.
Compared by.
Tendulkar

True copy
B.A. Joshi
4-6-53.
Clerk of the Court.

File in S. Belgaum 6/51

Ok.
29/9

Sd/M
29/9

S. Belgaum

41 75

Civil Appeal No. 202 of 1953.

IN THE COURT OF THE DISTRICT JUDGE, BELGAUM.

1. Sayyad Babasaheb Wallad Khadirpacha Inamdar, age 36 caste Muslim occupation Jammedari of Marihal, Taluka Belgaum and others.. ..Appellants.

Vs.

1. The State of Bombay and 9 others. ..Respondents.

Claim Rs. 5/- for Court fees and judn.

Herein the appellants being aggrieved by the decision of the Civil Judge, S.D., Belgaum, in Reg. Civil Suit No.741/1952. dated 17-2-1953, begx to prefer this appeal against the same on the following grounds, viz :-

1. The decision of the lower Court is against law and evidence in the case.
2. The lower Court was wrong in holding that the order dated 10-2-1941 of the Revenue Board Sangli was ultra vires and illegal.
3. The lower Court erred in holding that the suit is not barred by the Revenye Jurisidction Act X of 1876.
4. The lower Court ought to have taken into consideration the fact that the Chief of Sangli was a Sovereign authority and that his orders cannot be challenged by way of suit.
5. The lower Court did not consider the important fact that the suit though apparently is for a declaration of the order by the revenue Board dated 10-2-1941 to be ultra viress and illegal is in effect a suit for a declaration of the orders by the Chief of Sangli to be illegal and ultra vires.
6. The lower Court ought to have seen that the Civil Court has no jurisdiction to either entertain the suit or grant an injunction as prayed.
7. The lower Court ought to have placed the burden of showing that the revenue Board had no authority

to..

to order sale of lands of Shahajade on the plffs; it has been wrongly thrown on the defts.

8. The lower Court erred in holding that the suit is not barred by limitation.

9. Proper issues are not framed.

10. Proper inferences are not drawn.

11. Order as regards costs is wrong.

For all these reasons it is prayed that the decree of the ~~&~~ lower Court be kindly set aside and the appeal be allowed with costs.

The Certified copies of the judgement and decree are produced herewith.

The addresses of the respondents are the same as given in the lower Court.

Belgaum.
1-6-1953.

Drafted and presented by

Pleader.

Suits:
Belgaum.

For a declaration that no revenue authority has powers to pass an order for mesne profits and as such the order, dated the 10th February 1941, passed by the Revenue Board, Sangli, is illegal and ultra vires and for an injunction.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 14179-E
Bombay Castle, 11th August 1954.

Read Government Resolution, Legal Department No.15010/E dated the 14th July 1953.

In the Court of the Civil Judge, (Senior Division), Belgaum. Civil Suit No.30 of 1949. (New Civil Suit No.741 of 1952).	Letter from the Collector of Belgaum No.GB/LAW/ 875, dated the 23rd July 1954 requesting
Sayad Shahajadesahab Wallad Hydarsaheb -- Plaintiff. vs. The State of Bombay and others - Defendants.	

Government's sanction to the defence of the Civil Appeal No. 202 of 1953 filed by the plaintiff in the suit noted in the margin.

RESOLUTION: Sanction is accorded to the defence of Civil Appeal No.202 of 1953 in the Court of the District Judge, Belgaum on the lines of the brief accompanying Government Resolution, Legal Department No.478 dated the 8th January 1951 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division), Belgaum dated the 17th February 1953.

By order and in the name of the Governor of Bombay,

R.T.Katarki

(R.T.KATARKI),
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Belgaum,
The District Government Pleader, Belgaum. He is requested to file cross objections on the point of costs.

KYK/4.8

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File in S. Bel. 6/51

VL

1/48

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S. Bel. 6/51

13/3/74

41 Ex 1

1-6-1953.

In the Court of II EXTRA ASSISTANT JUDGE,
BELGAUM.

Civil Appeal 202 53
xxxxxx
xxxxxxxxxxxxxxxxxx C.C. 741 52 Civil xxx/ , S.D., Belgaum.
(Shri P.D.Mahatekar) Belgaum.

Shri.G.A.Desai.

1. Sayyad Babasaheb Wallad Khadirpacha Inamdar, age 36, Caste Muslim, Occ. Jammedari of Marihal, Tal. Belgaum.
2. Sayyad Nasirpacha Wd. Khadirpacha - Inamdar, age 26, rest do.
3. Madinabi alias Madinabegum W/O Abdulmunaf Inamdar, age 29, Occ. House-hold work, rest do.
4. Nilofarbegum alias Nilam Pachabi, Abdul Munaf, age 8.
5. Firadoshi Begum alias Firdosi Pachabi, age 5.
6. Minors by their guardian appellant No.3.

(Defendants Nos. 2, 3A to 3C, and 4.)

Against:

Shri.M.R.Patil for Respt.1.
* G.N. Inamdar.
* T.S. & N.S. - Hargundkar.

1. State of Bombay.
2. Sayyad Bibijan w/o Sayyad Shahajadesaheb Inamdar, Muslim, Agriculture and Jammedari age 54 of Belgaum.
3. Sayyad Habibpacha alias Abdulhasan wd. Sayyad Shahajadesaheb Inamdar, age 35, rest do.
4. Sayyad Sahebpacha Chafipacha alias Sayyad Mahama-dhusain Wd. Sayyad Shahajadesaheb Inamdar, age 33, rest do.
5. Sayyad Sahedabi w/o Mahabubapacha Inamdar, age 27, House-hold work, Muslim, Belgaum.
6. Mustafa Pacha Wallad Sayyad Shahajadesaheb Inamdar, age 26, rest do.
7. Sayyad Ammajan father Sayyad Shahajadesaheb Inamdar, age 33, rest do.
8. Sayad Mahabubi wallad Sayyad Shahajadesaheb Inamdar, age 23, rest do.
9. Khutiabi w/o Haidarsaheb Inamdar, age 64, Muslim, Household work of Marihal Tal. Belgaum.
10. Firadesbi wallad Khadirpacha Inamdar, 24, rest do.

Claim Rs. 5/-for court fee and Jurisdiction.

This is an appeal by the plaintiffs against the decision of the learned Defendants Nos. 2, 3A to 3C and 4 against the decision of the learned Civil Judge, Senior Division, Belgaum, decreeing the plaintiffs suit by permanently restraining defendants from executing the order dated 10-2-1941.

2. The plaintiffs-respondents had originally filed this suit in the District Court of Sangli on 20-4-1942 and the suit was originally numbered as suit No. 7 of 1942. After the merger of the Sangli State with the State of Bombay, the suit was transferred to the Court of the Civil Judge, Senior Division, Belgaum, and was re-numbered on 17-3-1949 as Special Suit No. 30 of 1949. On 17-12-1952 the parties gave a joint pursis stating that the suit had been wrongly numbered as a special suit and having regard to the valuation of the suit for Court fees and jurisdiction it should have been numbered as a regular Suit only. So by order below Ex. 1, the suit was ordered to be numbered as a regular suit and it was then numbered as regular Suit No. 741 of 1952. The plaintiffs-respondents have filed this suit for a declaration that the order dated 10-2-1941 was illegal and that defendants were not entitled to realise the amount as directed by that order through the Revenue Courts and for a perpetual injunction restraining the defendants from enforcing the said order dated 10-2-1941.

3. The plaintiffs-respondents had stated in the plaint that one Siti Pachabi had 1/3rd share in the income of the inam villages of Honage and Marihal in Shahapur Taluka of Sangli State. After the death of Siti Pachabi on 2-12-1908 dispute arose in the Revenue Court as to who were the heirs of the deceased. As a result of the enquiry Shahajadesaheb, the original plaintiff was declared to be the heir of the deceased Pachabi and his name was entered in the Revenue

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Records in 1916. The income received by the Sangli State during the period of attachment was also handed over to the deceased plaintiff Sahajadesaheb. After that the order of 1918 was set aside in 1922 and Mahaboobi w/o. Khadir Pacha was declared to be the heir of Pachabi and her name was entered in the State records. The Division Application No. 8 of 1934 of the deceased Shahajade-Saheb was dismissed and he was directed to hand over possession of all the properties to Mahaboobi together with the income received by him. Mahaboobi then took possession of the properties through the Revenue Courts. The order regarding the refund of the income by the deceased plaintiff Shahajadesaheb was not executed for a long time. Though the Revenue Court has not authority to execute that order for refund on 10-2-1941, the Revenue Bench made the order in that the income received by Sahajadesaheb should be - recovered from him. Plaintiffs contention is that the said Revenue Bench had no authority to pass such an order. It was further cont--ended by the plaintiff that non notice was given to him by the Revenue Bench before passing the order dated 10-2-1941 and that the said order was illegal and hence this suit for injunction.

4. The State of Bombay which is now defendant No. 1 in this suit had filed its written statement at Ex. 126. By that written statement it adopts the written statement Ex. 40 filed by original defendant No. 1, the Chief Revenue Officer, Sangli. It has further contended that the State of Bombay was not liable for any illegal or ultra vires act of the former Sangli State. By the written statement Ex. 40, the Chief Revenue Officer, Sangli, had contended that as the matter in the suit was decided by the Huzur Court in 1922 and 1925 the present suit was not tenable and that the suit was barred by Res judicata. It was further contended that the decree in suit No. 2 of 1274 was a consent decree it could not

be challenged. It was also contended that the suit property was both Watan and Inam property and so under no Civil suit cannot lie in the way in which itx was brought. He had also contended the jurisdiction of the Civil court to pass an order against the State or grand an injunction against the said order for recovery of amount which it was going to recover on the force of an legal order. The suit was also challenged on the ground that it was bad for want of proper and sufficient notice.

5. Defendants Nos. 2 and 5 had filed their written statement at Ex. 31. Then contended that the suit was barred under Sections 9 and 11 and order 2 rule 1 of the Code of Civil Procedure. According to their version Sahajadesahab had got possession of the property through Pachabi through the Revenue Court and in Darkhast No. 8 of 1911 it was decided by the District Court, Sangli, that the income received by Sahajadesaheb during the period of attachment shall be paid by him to defendants Nos. 2 to 5. The appeal of deceased Shahe-Jadesahab against that order was dismissed. On 22-12-1922, the Revenue Courts declared that Jahaboobi was the heir to Pachabi and that heir's name should be entered with respect to the inam villages. The appeal and application for Revision of Shahajadesaheb against that order were dismissed. Sahajadesaheb had obtained the income received by the Revenue authorities during the period of attachment by furnishing security. It was further contended by them that the Revenue Bench was properly constituted and the order passed by the Bench on 10-2-1941 was quite legal. They further contended that after that order Sahajadesaheb's application was made inter alia for setting aside that ex parte order was heard and was dismissed and the previous order was again confirmed on 25-6-1941 and that the above orders having been passed in pursuance of Inam Jawak No. 138/1932 and Huzur Court No. 8/1334 were quite legal. They also contended that the suit was not maintainable without plaintiffs getting those 2 orders set aside.

6. Defendant No. 6 by his purshis Ex. 32 had adopted the written statement of defendants Nos. 2 to 5 at Ex. 31.

7. The learned trial Judge had framed several issues at Ex. 150 about the suit being barred by Revenue Jurisdiction Act about the suit being barred by Sections 9 and 11 and Order 2 rule 1 of the C.P.Code about the suit being barred by Res judicata about the suit being barred as contended in paras 9 of Ex. 40 about plaintiffs being entitled to the injunction sought about the suit being barred by limitation about the plaint being properly stamped and about the relief to which plaintiffs are entitled to. The learned trial Judge negativing the contentions of the defendants answered issues Nos. 1 to 5 and 7 in the negative and issue No. 8 in the affirmative. He further held that plaintiff was entitled to the injunction sought and so he decreed the suit by perpetual injunction restraining the defendants by the from executing the order dated 10-7-1941. Being aggrieved by the said decision defendants Nos. 2, 3A to 3C and 4 have come in appeal and they have joined the State of Bombay and defendants Nos. 5 and 6 as respondents Nos. 1, 9 and 10.

8. After hearing the learned pleaders of the both the sides both the sides I am disposed to set aside the decree of the trial Court and to remand the suit for a fresh decision for the following reasons :-

Reasons.

9. In the present case it is an admitted position that one Shri Pacchabi had 1/3rd share in the income of the Inam villages of Bhuyge and Murihal in Shahapur Taluka of Sangli State. After her death on 8-12-1908 there were disputes about succession to her [illegible] in the the first instance the deceased Muhajadebab [illegible]

the original plaintiff was recognised as the heir by the order of the Sangli State in 1916 and he was handed over possession of the property and the income received by the Sangli State during that period. Subsequently in 1922 that order of 1916 was set aside and one Mahbubi was recognised as an heir and the deceased plaintiff Shajadesaheb was directed to hand over possession of all the properties to Mahabubi together with the income received by him. The order for that refund of the income was not executed for a long time. Thereafter on 10-2-1941 the Revenue Bench passed an order that the income received by Shajadesaheb should be recovered from him.

10. It may be noted that plaintiff had challenged the legality of that order passed by the Revenue Bench. Plaintiff's contention is that the Revenue Bench had no authority to passed that order and that the said order was illegal and ultra virus. As against that defendants contention was that the Revenue Bench was properly constituted and the order passed by the Bench on 10-2-1941 was quite legal. But in the issues framed at Ex. 150 there is no issue about the order dated 10-2-1941 of the Revenue Bench being illegal and ultra virus as contended by the plaintiffs. Again plaintiffs had further contended that the Revenue Courts had no authority to execute the said order for refund and to sell his properties in execution of that order. The authority of the Revenue Courts for executing the order was challenged by the plaintiffs but on that point also the trial Court had not framed any such specific issue. Again the appellants by application Ex. 11 have further stated that in view of the contentions of the parties a specific issue should have been framed as to whether the Executive Council to whom the applications of Mahabubi and Shajadesaheb were transferred for disposal by the Sangli State could itself - transfer those proceedings to the Revenue Board and whether trans-

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it would amount to the transfer of deligated powers by an Agent to his own agent and if so whether the same illegal. From the pleadings it does not appear whether there is any such specific plea or not. However that point is included in the first suggested issue by the appellants about the illegality of the order passed by the Revenue Board. However it will be open to the trial Court to frame that issue or any other proper issue on that point which if it arises from the pleadings.

11. The trial Court has only framed an issue about plaintiffs being entitled to the injunction sought. But the grant of the injunction depends upon the findings in plaintiffs favour about the legality of the order passed by the Revenue Board and about the right of the Revenue Courts to sell plaintiffs properties in execution of that order. It was urged by both the sides that in the absence of such specific issue material evidence on these points has not been led at all in the trial Court and that the matter should be remanded to the Trial Court for fresh decision after raising the issue suggested above and after allowing the parties to lead fresh oral and documentary evidence on the new issue. I see no reason to differ from the learned pleaders of both the sides on this point. Without deciding the question raised by the parties in the pleadings and allowing them to lead evidence on those points it is not possible to come to conclusion whether plaintiffs are entitled to the perpetual injunction sought. For all these reasons, I hold that the decree of the trial Court should be set aside and the suit should be remanded to the Trial Court for fresh decision after framing necessary issues as directed above and after allowing the parties to lead fresh evidence both oral and documentary as desired by them on the said new issues. I, therefore, pass the following

order.

O r d e r.

The appeal is allowed and the decree of the trial Court is set aside. The suit is remanded to the trial Court for fresh decision after framing necessary issues as discussed above and after allowing both the parties to lead any fresh evidence either documentary or oral that they may desire to lead on the said new issues. Costs of the appeal to be costs in the cause.

Sd/- M.B.Dubal

Dated:- 16th October 1954.

II Extra Assistant Judge,
Belgaum.

6/57

L.D.
5 = MAY 1956
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No. 373 of 1956.
Office of the Dist.Govt.Pleader
Belgaum. Dated:- 30-4-56.

To

The Remembrancer of Legal Affairs, Bombay.

Subject:- Civil Suit No. 741/52.
1. Sayyad Babasaheb Wallad Khadirpacha
Inamdar of Marihal & 5 others .. Plffs.
Vs.
1. State of Bombay & 9 others. .. Defts.

14654
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7-5-56

Sir,

I have the honour to state that the above mentioned suit has been dismissed with costs on 21st April 1956 by the Civil Judge, Senior Division, Belgaum. An uncertified copy of the judgment will follow shortly.

Yours faithfully,

Dist.Govt.Pleader, Belgaum.

Copy F.W.Cs to the Collector of Belgaum, for information.

SdD.

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L.D.

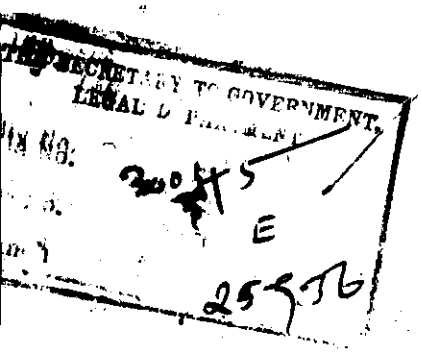
Submitted.

Civil suit No. 30741 of 1952
is decided in favour of Govt.
File in S. Bel. 6/51

11/5.

Sol. (ML). 11-5

6/57



No. 806 of 1956.
Office of the Dist.Govt.Pleder,
Belgaum. Dated:- 22-9-56.

To

The Remembrancer of Legal Affairs, Bombay.

Subject:- Civil Appeal No. 212/56. (C.S.No.741/52).
1. Sayadasahebbi Kom Sayad &.others..Appellants.
Vs.
1. State of Bombay & others.. Respdts.

Sir,

I have the honour to send herewith a copy of the appeal memo which has been filed by the above appellant, with a request to accord sanction for the defence of the appeal.

Yours faithfully,

Dist.Govt.Pleader, Belgaum.

Copy F.W.Cs to the Collector of Belgaum with a copy of the appeal memo, for information and necessary action.

SHD.

Presented on 4-6-56.

Civil Appeal No. 212/56.

IN THE COURT OF THE DISTRICT JUDGE,

AT BELGAUM.

1. Sayyadsahebbi Kom Sayad Mahabubpachha Inamdar.
2. Sayadabibima Kom Sayad Abdul Rahiman Inamdar.
3. Sayad Mustaphapacha Wd. Shahajadesaheb Inamdar.
4. Sayada Ammajan father Shahajadesaheb Inamdar.
5. SayadaMahabubbi father Shahajadesaheb Inamdar.

.. Appellants and Original Plffs.

Vs.

1. State of Bombay.
2. Sayad Babasaheb Khadirpachha Inamdar, H.No.135, High Street, Camp, Belgaum.
3. Madinabai alias Madinabegum W/O Abdul Munaf Inamdar, Marihal, Tal. Belgaum.
4. NilafarBegum alias Nilamapachhabi,
5. Firdosbi begum alias Firdospachhabi

daughters of Abdul Munaf, minors by their guardian Respt. No.3, rest -do-

6. Sayad Nazirpachha Wd. Khadirpachha Inamdar rest -do-
7. Bibanbi father Haidarsaheb Inamdar, H.No. 135, High Street Camp, Belgaum.
8. Sayadshafipacha Wd. Shehajadesaheb Inamdar, residing at Mali Galli, Belgaum.
9. Sayadsaheb Habibpacha Shahajadesaheb Inamdar, residing at -do-.

Respondents and Original Defts.

Claim for Court fee Rs) 5/-
Claim for Jurisdiction)

In this the abovenamed appellants beg to appeal to the District Court, Belgaum against the decree passed by the Civil Judge, S.D., Belgaum, in R.C.Suit No.741/52 on 21-4-1956 and set forth the following grounds of objection to the same:-

1. The decree of the lower Court is contrary to law and evidence in the case.

2. In view of the clear and unambiguous statement in the judgment, that the money, for the recovery of which the Revenue Officers have taken out the property for sale, was the income collected during the period of attachment consequent on the death of Pachhabi, the lower Court erred in holding that

suit was barred by the Rev.Juriddiction Act.

3. The lower Court erred in holding that the act barred the suit, since the rents etc., are collected during the period of attachment, were paid to Shahajadesaheb, having recognized him to be the heir of Pachhabi.

4. The lower Court lost sight of the fact that the Land Revenue Code enables the Rev.Authorities, to sell immoveable property for the recovery of land Revenue only.

5. The lower Court erred in holding that Sec.81 of the Watan Act applies to the case.

6. The lower Court erred in not properly appreciating the plff's case, that he seeks to challenge the order of the Revenue Bench dated 10-2-41 irrespective of the validity or otherwise of the previous orders.

7. The lower Court failed to note that Shahajadesaheb was held to be the ~~hri~~ heir of Pachhabi and her property attached on her death, with subsequent collections, was ordered to be paid to him as such heir, the Revenue Court's not possessing power to sell immoveable property for the recovery of such money.

8. Even the Chief himself has no power to order such sale and even his order does not state the mode of recovery of the money!

9. The lower Court erred in applying Sec.144 C.P.C., by analogy, to such a case.

10. The lower Court erred in holding that the decree of the Revenue Bench dated 10-2-41 was in furtherance of the Chief's order.

11. The lower Court erred in not holding that though the order for directing restitution may be within the power of Revenue Courts, the course followed by them was outside law and ultra vires.

12. The lower Court erred in holding that the Rev.Bench was competent to decide the matter in issue.

13. The order of the lower Court that Sec.187 of Land Revenue Code enables the Revenue Courts to sell the plff's land for the recovery of Mahabubi's claim is erroneous.

14. The lower Court erred in holding that the suit is barred by O.2., r.2.

15. The lower Court erred in holding that the plffs are not entitled to the injunction sought.

16. The separate assessment of costs of defts 2, 3A, C and defts 4 to 6 is erroneous.

The addresses of the appellants to this appeal are the same as those in the lower Court. The addresses of Respondents are as given above.

Plff 1, one of the heirs of deceased Shahajadesaheb is dead and the remaining plffs are her heirs.

Plffs Nos.4,5 having been married they are described by their names after their marriages. Deft No.5 is dead. And deft 6 is also dead and her heir is Respdt.No.7.

Respondents Nos.8 and 9 who were of the original plffs as Nos.2 and 3 are not present to sign the Vakalatnama, so they are joined as respondents.

As the Court was closed till today on account of summer vacation this appeal presented today is in time.

For the above among other reasons this appeal be allowed with all costs throughout.

Belgaum.

Dated:- 4-6-56.

Sd/- N.S.Nargundkar,

Pleader for Appellants.

Immediate.

No. 24031/E

Office of the
Remembrancer of Legal Affairs,
Sachivalaya, Bombay, 18th October 1956.

Subject:- Civil Appeal No. 212/56,(C.S.No.741/52)
Sayadasahebbi Kcm Sayad & Others..
Vs.
State of Bombay & others.. Respondents.

MEMORANDUM.

With reference to his letter No. 806, dated the 22nd September 1956 on the above subject, the District Government Pleader, Belgaum is informed that sanction for the defence of the above mentioned appeal is hereby accorded.

for Remembrancer of Legal Affairs.

To,
The District Government Pleader,
Belgaum.

Copy forwarded with compliments to the Collector of Belgaum.